IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7787 OF 2004

1a.Hublal Omkarnath Mishra & Ors. .. Petitioners.
Vs.
M/s.Pararampurier Industries Ltd. .. Respondents.

Mr.M.R.Pande with Mr.R.P.Ojha for the petitioners.
Mr.S.J.Thakkar for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 20TH SEPTEMBER, 2004

P.C.:

. Heard Mr.Pande, learned counsel for the petitioner and Mr.Thakkar, learned counsel for respondent no.1.

2. Rule, returnable forthwith.

3. Mr.Thakkar, learned counsel waives service for respondent no.1. By consent of the parties taken up for final hearing.

4. This petition is directed against the order dated 10.9.2004 passed below Exhibit-12 in S.C.Suit No.1323 of 1994 by which the prayer for adjournment to 14.9.2004 has been rejected. Such prayer was

made to enable the petitioner-P.W.1 to offer himself for cross examination. It appears that the petitioner had made himself available for cross examination initially on 6.8.2004 then on 19.8.2004 and thereafter on 31.8.2004. For some or other reason the cross examination was not conducted and hence the cross examination of the petitioner was closed. In the meantime petitioner-P.W.1 left for his native place as there was a death in the family. On 10.9.2004 the respondent made an application for recalling of the witness for cross examination. That application was allowed and the petitioner was directed to offer himself for cross examination on the very day. Since the petitioner-P.W.1 was not in Mumbai, he could not make himself available for cross and, therefore, his advocate filed an application seeking adjournment, which came to be rejected by the impugned order and the respondents were directed to lead their evidence. Considering the chronology of the events, the learned Judge ought to have given some breathing time to the petitioner-P.W.1 to make himself available for the cross examination. Keeping in view the overall facts and circumstances of the case this petition is allowed. The petitioner-P.W.1 to make himself available for

cross examination on the next date of hearing i.e. 24.9.2004 failing which it is open for the learned Judge to proceed with recording of evidence of the defendant.

5. I am informed that this court had earlier directed to dispose of the trial on or before 5.10.2004. At the request of the learned counsel for the parties the time to dispose of the trial stands extended till 30th November, 2004.

6. Rule is made absolute in the aforesaid terms. The petition, accordingly, stands disposed of.

(D.B.Bhosale, J.)